

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

DEMARCUS WILLIAMS,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	2:18cv938-MHT
)	(WO)
DARRYL McMILLIAN, C.O.,)	
et al.,)	
)	
Defendants.)	

ORDER

This cause is now before the court on plaintiff's notice of appeal (doc. no. 33), which the court is treating as a motion to proceed on appeal in forma pauperis.

28 U.S.C. § 1915(a) provides that, "An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." In making this determination as to good faith, a court must use an objective standard, such as whether the appeal is "frivolous," Coppedge v. United States, 369 U.S. 438, 445 (1962), or "has no substantive merit." United States v. Bottoson, 644 F.2d 1174, 1176

(5th Cir. Unit B May 15, 1981) (per curiam); see also Rudolph v. Allen, 666 F.2d 519, 520 (11th Cir. 1982) (per curiam); Morris v. Ross, 663 F.2d 1032 (11th Cir. 1981).

Applying this standard, this court is of the opinion that the plaintiff's appeal is without a legal or factual basis and, accordingly, is frivolous and not taken in good faith. See, e.g., Rudolph v. Allen, supra; Brown v. Pena, 441 F. Supp. 1382 (S.D. Fla. 1977), aff'd without opinion, 589 F.2d 1113 (5th Cir. 1979). It appears that plaintiff is appealing the judgment entered dismissing two parties; the court finds this appeal without a legal basis and frivolous for the reasons set forth in the recommendation of the magistrate judge (doc. no. 18). To the extent plaintiff appeals the magistrate judge's order (doc. no. 32) requiring him to respond to the defendants' special report, that order is not an appealable final order; thus, his appeal of that order is without a

legal basis and frivolous.

Accordingly, it is ORDERED that the plaintiff's motion to proceed on appeal in forma pauperis is denied; and that the appeal in this cause is certified, pursuant to 28 U.S.C. § 1915(a), as not taken in good faith.

DONE, this the 12th day of April, 2019.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE